



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0037; FRL-9928-50-Region 9]

Revisions to the California State Implementation Plan, Butte  
County Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of revisions to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO<sub>x</sub>) and particulate matter (PM) emissions from open burning. Under authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs BCAQMD to correct rule deficiencies.

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established docket number EPA-R09-OAR-2015-0037 for this action. Generally, documents in the docket

for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, (415) 972 3073, [Gong.Kevin@epa.gov](mailto:Gong.Kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to the EPA.

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### **I. Proposed Action.**

On February 11, 2015, in 80 FR 7555, the EPA proposed a limited approval and limited disapproval of the following rule that was

submitted for incorporation into the California SIP.

Table 1 - Submitted Rule

<b>Local Agency</b>	<b>Rule #</b>	<b>Rule Title</b>	<b>Amended</b>	<b>Submitted</b>
BCAQMD	300	Open Burning Requirements, Prohibitions and Exemptions	02/24/11	09/21/12

This rule supersedes the BCAQMD rules currently in the California SIP as listed below.

Table 2 - Rules to be Superseded

<b>Rule</b>	<b>Title</b>	<b>SIP Approval Date</b>	<b>FR Citation</b>
301	Prohibitions on Open Burning	February 3, 1987	52 FR 3226
302	Exemptions to Rule 301	February 3, 1987	52 FR 3226
303	Burn Permits	February 3, 1987	52 FR 3226
304	Exemptions to Rule 303	February 3, 1987	52 FR 3226
306	Information Furnished by Permit Applicant	February 3, 1987	52 FR 3226
307	Ignition Hours	February 3, 1987	52 FR 3226
308	Notice of Intent to Ignite	February 3, 1987	52 FR 3226
309	Freedom from Debris and Moisture	February 3, 1987	52 FR 3226
310	Arrangement of Agricultural and Wood Waste	February 3, 1987	52 FR 3226

311	Drying Period	February 3, 1987	52 FR 3226
312	Wind Direction	February 3, 1987	52 FR 3226
313	Ignition Devices	February 3, 1987	52 FR 3226
314	Burning of Vines or Bushes Treated with Herbicides	February 3, 1987	52 FR 3226
315	Rice Straw Burning	February 3, 1987	52 FR 3226
316	Field Crop Ignition	February 3, 1987	52 FR 3226
317	Field Crops Harvested Prior to September 10	February 3, 1987	52 FR 3226
318	Restriction of Burning During Poor Air Quality Conditions	February 3, 1987	52 FR 3226
320	Certificate from Department of Fish and Game	February 3, 1987	52 FR 3226
322	Special Permit	February 3, 1987	52 FR 3226
323	Range Improvement Burning	February 3, 1987	52 FR 3226
324	Burning at Disposal Sites	February 3, 1987	52 FR 3226
325	Exemption to Rule 324	February 3, 1987	52 FR 3226

We proposed a limited approval because we determined that Rule 300 improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

1. Allowing the burning of rubbish under variance approved

by hearing board in paragraphs 5.53 and 6.5.

2. Air Pollution Control Officer discretion to waive drying time requirements in paragraph 8.2.4.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

## **II. Public Comments and EPA Responses.**

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

## **III. EPA Action.**

No comments were submitted. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP

revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the BCAQMD, and the EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf>.

#### **IV. Incorporation by Reference.**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the BCAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews.**

##### **A. Executive Order 12866, Regulatory Planning and Review**

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

##### **B. Paperwork Reduction Act**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

**C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids the EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

**D. Unfunded Mandates Reform Act**

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal



mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action

approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**E. Executive Order 13132, Federalism**

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the

funds necessary to pay the direct compliance costs incurred by State and local governments, or the EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**F. Executive Order 13175, Coordination with Indian Tribal Governments**

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have

tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

**G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks**

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

**H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use**

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act**

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. This action does not require the public to perform activities conducive to the use of VCS.

**J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population**

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA lacks the discretionary authority to address

environmental justice in this rulemaking.

**K. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective on **[insert date 30 days after date of publication in the Federal Register]**.

**L. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 18, 2015.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 -- [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Subpart F - California

2. Section 52.220 is amended by adding paragraphs (c) (168) (i) (A) (7) and (c) (423) (i) (G) (1) to read as follows:

**§52.220 Identification of plan.**

\* \* \* \*

(c) \* \* \*

(168) \* \* \*

(i) \* \* \*

(A) \* \* \*

(7) Previously approved on February 3, 1987 in paragraph (c) (168) (i) (A) (1) of this section and now deleted with replacement in paragraph (c) (423) (i) (G) (1) by Butte County APCD, Rule 300, as amended on February 24, 2011, Rules 301, 302, 303, 304, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 322, 323, 324 and 325.

\* \* \* \*

(423) \* \* \*

(i) \* \* \*

(G) Butte County Air Quality Management District.

(1) Rule 300, "Open Burning Requirements, Prohibitions and Exemptions," amended on February 24, 2011.

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7/8/2015]